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Jackson, Albert Atlee

The protector of property

Philadelphia, Pa.

[1911?]

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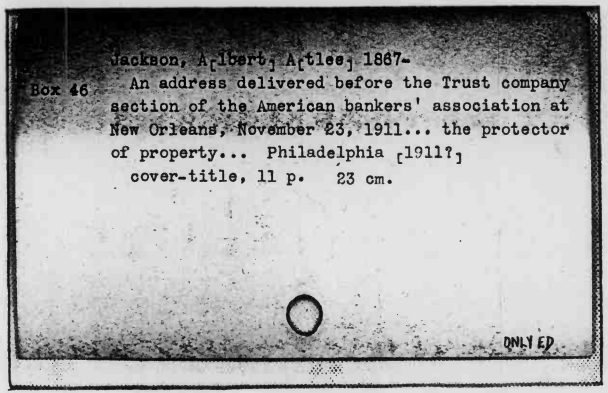
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An Address delivered before the Trust Company Section of the American Bankers' Association at New Orleans, November 23, 1911, by A. A. JACKSON, Vice-President, Girard Trust Company, Philadelphia.

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THE PROTECTOR OF PROPERTY.

Sent out with the compliments of George H. Paine, Philadelphia, Pa.

THE PROTECTOR OF PROPERTY.

To arrogate to oneself the position of an incorruptible guardian savors of egotism; in an individual such an assumption would be bombastic. There is no reason, however, why there should not stand upon that plane a corporation that because of the guidance of its executive and office staff is possessed of the brains of many individuals rather than those of one, and as against the individual has the benefit in the discharge of its duties of a machinery that is constantly renewed, so that instead of showing signs of weakness it becomes more efficient as its life progresses.

Perhaps it is idle in an assemblage of this nature, where we are of the same calling, to voice sentiments that presumably will be those of us all. It savors of a going along the line of least resistance, to talk of the services rendered to the Community by our Companies; of their integrity; their perpetuity; their many-sided usefulness; and yet it may not be amiss to bring to our minds these benefits possessed; for nothing is so good that it may not be bettered, and in exploiting the usual efficient scheme of existence occupied by Trust Companies, we may find opportunities to make their services even more complete and satisfactory. And here in this Convention is our chance that comes once a year to review what has been accomplished in our field, to scrutinize our present position, and to consider carefully what improvements may be made for our own welfare and the benefit of the property that it is our province to protect for others. It is the time for our annual taking account of stock and for the making of our New Year resolutions, that, unlike so many of those resolves, in our case are to be kept faithfully once they are made after the careful weighing of their merits.

The review of what has taken place in the life of this Section and in the field of our labors during the past year has been told us by our President and in the reports of the Committees. Perhaps you will let me say a few words upon the position of our Companies in discharging the duties laid upon them, primarily as care-takers of the fortunes of others, and as to possible betterments for the future, if I may make one or two suggestions and so induce other and further recommendations from

our members, I shall be very glad; for here is our opportunity, while we are together, to discuss what may be voiced by any one of us as his thought for the good of the Trust Company family, that it may bear fruit according to its worth.

As we are all of that family, I assume that we have the clannish feeling that our companies are well equipped to discharge satisfactorily the varied functions that lie within the scope of their business; let us claim for our corporate selves therefore, the place that we should occupy by right, and let us prove that the claim is not idly boastful, whether it be made purely as to our administrative qualifications or from a broader and more humanitarian standpoint.

One often hears of the nobleness of the profession practiced by the physician who heals the body, and of the comfort given to those in trouble by the ministers of that other profession whose aim is only to do good; not often, however, is it exploited that the Trust Company in its sphere acts other than as a corporation for profit, and there is prone to be overlooked its functions in keeping the fortune in good health, in endeavoring to restore it when weakened or shattered, and in aiding in the quieting of the mind of its clients who may be in distress concerning their mundane affairs.

One of the most hackneyed phrases in our language, to which there is imputed a meaning never meant by its author, is that a corporation has "no soul". This saying—so well suited in its wording to take the ear of the people and to make a catchword maxim—had its origin in the case of **Suttons Hospital** tried in the ninth year of the Reign of James the First at the Michaelmas Term of the Kings Bench, and reported by Sir Edward Coke in Part 10 of his reports; a cause argued openly by all the Barons of the Exchequer, and by all the Judges in England (save one who was ill) including Lord Coke himself, then Chief Justice of the Common Pleas. The Court found for the **Hospital** as a corporation, and the eminent Reporter of the case, surely with no thought of sarcasm nor of the taking of his words from the context for their popular meaning through the succeeding generations, quoted from the findings "They (corporations) cannot commit treason, nor be outlawed, nor excommunicate, for they have no souls."

But allowing the proper acceptation of the saying—justified in many instances by trespass on the rights and feelings of individuals who may have felt the power of corporate power and monopoly, I submit that our corporations, our Trust Companies that are not Trusts, not only are possessed of **souls**, and show them day by day, but that their **bodies**, impervious to the limitation of mortal life, and, if rightly governed, to the decay

that works in mortal tissues, stand firm and healthy, housing sane minds whose energy is devoted to the good of their clients; whose judgment protects the property of those persons whose material welfare is entrusted to them, and whose record, lengthening year by year, disproves the perverted saying of Lord Coke.

In its management of the estates committed to it by Wills and Deeds of Trust, by the Courts and by individuals who constitute it their Attorney in fact, or in the discharge of other fiduciary relations, the Trust Company is single-eyed for the benefit of its clients. Looking for its compensation only to its fees, often too small indeed, and to its good reputation, its cestuis que trustent need not fear the use, which is **misuse**, of their funds for its aggrandizement. It puts apart from all other business that it has the holdings of those for whom it stands in the position of a faithful guardian. If rightly conducted, it is examined frequently from within by its own people or auditors, from without by expert accountants, and in States where there exists a Bureau for the purpose, by the Department of Banking. If by some mischance reverses in its other lines of business, or the devastating sweep of a panic, hereafter, we hope, to be rendered improbable by the passage of some beneficent law as the outcome of the bill and plans that are engaging the attention of this whole Convention, if, I say, some such catastrophe involves one of our Companies—no danger attaches to the funds of the estates held by it in trust. They are separate and apart from its own assets, as free from attachment of its creditors as in well ordered Companies these trust properties are physically separated in their place of lodgment from the belongings of the corporation itself, or from those attaching to its other lines of business.

Being then outside the possible misfortunes that the Company itself may suffer (and the record shows that insolvency has come to few of them) an estate in its hands would seem to be essentially free from menace. Although we can not guarantee, as now and then seems to be the thought of some client that we should, the non-depreciation of the corpus, to which bad days come in common with all other bodies, and which is as sensitive to the fluctuations of values of those bad days, yet we can endeavor to keep it stable and to increase its value by proper means. The physical custody of its assets is safeguarded by efficient devices, and the records concerning it are carefully transcribed and open to inspection by the persons interested. Its funds are invested in directions not dictated by the choice, perhaps biased, of one person, but with the consensus of opinion of several heads well used to making such decisions, and in

accordance with existing Statutes governing the investment of trust funds, or in cases where the Trustee is not restricted by the instrument under which it acts to securities prescribed by law, then as thoughtful judgment may decide, in all instances with the desire to gain for the benefit of the cestui que trust a satisfactory rate of income commensurate with the safety of principal. For if the Corporate Trustee exceeds its province in making those investments, the Court to which it is accountable surcharges it, and by the very fact that as a corporation it is possessed of other assets that may not pertain to an individual Trustee, the estate suffers no loss. If then the perpetual corporation with its safeguarding capital and surplus, efficient management and its machinery for discharging the duties devolving upon it, protects the property that it holds in trust for others, its continued appointment and employment for these purposes should obtain in steadily increasing instances. Theoretically able to handle matters large and small as well as an individual, practically it shows its ability to discharge its duties better, and to make a more satisfactory fiduciary than the average individual who lacks the plant that the Company has accumulated, the staff of specialists that forms its office force, and in most instances, the strength of the corporation's assets that are responsible for the proper management of its trust affairs.

But if the Trust Company has taken, is taking and will take the place once occupied by individuals under Wills and Deeds of Trust and in other fiduciary capacities, it does not exclude from its scheme of management those individuals who have been appointed to the positions in question. Sincere in its desire to administer for the best benefit of the family of a testator the property that he has committed to its charge by his Will the Trust Company turns gladly to those persons who by reason of their former close association with the dead have knowledge of details that are of benefit to his Executor; and the Lawyer who formerly often was appointed by his client, naturally is retained by the Company as its Counsel in the administration of the estate left by that client whom he has lost.

The corporate Executor and Trustee strives to show its beneficiaries that their interests are taken care of by welcoming all aids from proper sources; that it has no complacent self sufficiency, and that its official staff is made of men who can realize the situation in which stand persons interested in an estate, so that their wishes may be followed where it is possible, and their benefits at all times considered.

Happy is the Company which justifies the designation of its title by being in all things "trusted" by its clients; that by

its record gathers to itself an increasing number of friends for what exploitation of its fitness is so effective as a reputation spread abroad by those whose own experience lends weight to their statements? And although the getting together of a large number of estates is a long process, this advertisement by the mouth of friends is an invaluable factor—once started it rolls by its own momentum, gathering weight as it goes. And it should be easy for us to make those friends. With our broad powers we reach and serve so many people in so many ways, taking their money on deposit; lending them funds when they are in need of and in the position to borrow them: housing their securities in our vaults; caring for their fortunes; buying and selling for them; acting for them—individuals and corporations; caring for their affairs in good standing and in insolvency, and administering their estates after their deaths. We stand in relation personal as well as financial to mankind from its birth when we act as its guardian, to its death, when we execute its will, and then we begin again for the next generation.

But while we believe in the efficiency of the Trust Company for the discharge of its duty in the broad field of its activities, constant vigilance is needed to maintain that efficiency and to take advantage of each opportunity for betterment for its own benefit and that of the persons with whom it has relations.

At the risk of asking your attention to certain conditions now existing that no doubt have had already your careful consideration, I venture to speak of the propriety of their cure for the greater protection of our properties in trust:—

Adam Smith in his "Wealth of Nations" says: "The subjects of every state ought to contribute toward the support of the government as nearly as possible in proportion to their respective abilities—that is, in proportion to the revenue which they respectively enjoy under the protection of the state."

While the book from which I quote was written more than a century and a quarter ago, the dictum is as true now as then. The national government and that of a state could not exist without the contributions of the citizens; the right to do business, to acquire wealth, to live in a community the benefits of which are enjoyed, carries with it the obligation to support that community and the general fabric of the state, without which these benefits would not exist. No one disputes the necessity of, and when equitably disposed, the justification for taxation by customs and excise duty, by corporate and mercantile license, by real estate and personal property taxes, and by the general tax on citizenship. Under a proper distribution of these, persons real and artificial contribute to the common weal out of their share of this world's goods proportionately as they are blessed with them.

Unfortunately the theory in some instances fails in its application, and that which in the propaganda of Adam Smith should work no hardship to the taxed, becomes a burden unjust, irritating, and in many cases distressful. It is one of these burdens that I have in mind, an irritating situation that confronts our Trust Companies in the managements of estates—the multiplication of charges against inheritance from a decedent who dies with his fortune relating, although perhaps only by a fiction of law, to several of our United States.

In the past year much has been written and said on the subject of the iniquity of taxation of estates—not the charge that brings to the Commonwealth the contribution justly due by a decedent as his last act in support of the government and his fellow citizens; that of itself is necessary, is sanctioned by laws in many instances proper and needed for the upkeep of the people and their institutions. It is not that charge of which complaint is made, but those taxes, the result of legislation often hasty and ill considered, occasioned by the cupidity of a State which has seen with envy a sister commonwealth harvesting large sums by heavy imposition on property laid open to tax by the passing of the owner, or more often occasioned by the desire to work retaliation because that sister commonwealth has used for the mulcting of a fee property tangibly or intangibly found within her borders before she will let it go from her grasp to the domicile of the decedent.

As we know, the rates of direct and collateral inheritance taxes vary in the different States, and I do not intend to burden you with the reading of tabulated statements setting forth the statutes that exist in various localities. These have been published, and no doubt have been read by many of you. It is upon the general situation, and the need of its betterment, that I venture to plead for the enlistment of your good offices, instancing only the inheritance tax of one jurisdiction that would seem satisfactory to many critics and sufficient for the purposes of the Power that has decreed it.

The State of Pennsylvania enjoys the benefits of a Statute that with few amendments has been upon her books since 1826. Under it the persons who by reason of their relationship to a decedent most need his fortune after they are deprived of his support receive their inheritance free of the imposition of taxation by the State. The Commonwealth recognizes the injustice of charging any distributive share that goes—let us say—to a member of the immediate family of the decedent who in theory, at least, will be a citizen of that Commonwealth, and under the law will continue to pay to it the yearly contribution that has theretofore been made by the person who has possessed the fortune and is dead. Therefore it does not make an opportunity to enrich itself unnecessarily by seizing a portion of that share in its transit from the late owner to those whom he has left behind, and who by his death, presumably deprived of the support and benefits that he had been accustomed to render them, although by that death they had become possessed in their own rights of the portion of his fortune left them, nevertheless are obliged to live upon the productive power of that fortune without the swelling of it by the earnings of the decedent.

The Taxing Power therefore exempts the inheritances of these persons but continues its receipts from the capital so divided to them by taxing it annually as theretofore it had taxed it when held together in the hand of the original possessor. The theory is beneficent; the law is sane.

The position of beneficiaries who are collateral in their relation to the decedent, or strangers to his blood, is quite different. The State appreciates that upon their bequests a levy may be made with justice. Their expectations were—we may say—unwarranted; their inheritances a gift from the donor. As to their temporary or continued residence within the Commonwealth there is no theory, nor as to the future contribution to the State by annual taxation. It is but right that at the going out of these portions of the estate of a citizen, the Commonwealth shall have a percentage for its upkeep. In the State of which I speak, this percentage is fixed at the reasonable tax of five per cent., and no matter to what figures the distributive share ascends, nor to what remote degree of relationship or alienation does the beneficiary withdraw there is no increase in that rate.

Furthermore, having given for so many years the benefits of this law to estates administered in its jurisdiction, Pennsylvania does not meddle with the securities of a non-resident that at the time of his death may be lodged within its borders. If a citizen of another State dies possessed of securities physically in Pennsylvania, that State does not impose a tax before his executor can remove them to the place of his domicile, nor, should the decedent have possessed securities of a Pennsylvania corporation the certificates of which are outside the State, does it charge a tax upon them before the transfer is allowed.

With reference to this happy condition of affairs, Mr. Hugh Bancroft of the Boston Bar in his instructive manual upon Inheritance Taxes says—"It is refreshing to find the Courts in at least one State insisting that, if personal property of residents held outside of the State is to be taxed on the theory that personal property follows the domicile of the owner, the logical

consequence of this theory is that personal property of non-residents within the state is not taxable."

To our cost, or rather to the cost of our estates, we know that this satisfactory situation does not exist in certain other Commonwealths, and that under the laws of some of them the fortunes of a decedent unfortunate enough to own securities of corporations transacting business in several jurisdictions, or lodged outside that of his domicile may be subjected to double, triple or even quadruple taxation, while at least one State a few years ago enacted legislation, the possible effects of which under certain conditions might be to confiscate and more than confiscate a legacy.

The evils of laws inducing double taxation, or imposing it at abnormal rates, have been felt keenly by New York in the flight of securities from her borders after the passage of the law of 1910, and she has promptly applied the cure by the amendment of the current year. No doubt in the passing of time other States will remedy the injustice that may exist in them not only to inheritors but to themselves, and feel that the theory of fair play and give and take is a good and comfortable one to make a basis of taxation.

In the meantime can not we the Trust Company Section aid in the work by a campaign of education among the legislatures?

And if such action be taken, it occurs to me to suggest two other matters that might be brought forward in localities where exactments on the subject would be of benefit.

One of them is the fixing of what investments shall be legal for funds held in trust. Laws expressed or implied as to this exist, I think, in the majority of the older states but are lacking in others.

It is as much for the protection of the Trustee as of the estate that certain classes of investments should be designated as approved by the Courts for the use of funds under their control. Necessarily these classes may vary in different localities, but as they should embody property that is the least likely to be affected by depressed conditions, an estate should be safe in their purchase and the Trustee which buys them after due examination should be protected by the Courts if by some mischance they suffer a depreciation in its hands.

Just as many persons consider that the law equitably provides for the distribution of the estates of intestates and so are content to die without a Will, so may others be desirous that the portion of their possessions directed to be held together after death be represented only in such form as is sanctioned by the laws governing the investment of trust funds. Therefore there should be such laws to direct the Trustee where it is without direction in the instrument under which it acts. But on the other hand there should not be denied the right of a testator or a donor to permit his Trustee in its wise discretion to invest in directions that may appeal to it without the scope of legalized securities and without liability to it for such following of his permission.

And if these two matters of which I have spoken should be taken up with the legislatures may I suggest the urging of State supervision of Trust Companies in such Commonwealths, rapidly lessening in number where there is no Department of Banking, so that soon throughout the country there will be no one of our institutions that is not subject to examination under the law.

This Section has an admirable Committee on Protective Laws. It is composed of busy men engaged in the affairs of their respective environments yet finding time to discharge the duties laid upon them by this organization.

At the risk of burdening them still further I venture to suggest Mr. President, that the committee take under consideration whether or not there is value in my belief that there will be served the interests of Trust Companies at large, that the property in their charge will be conserved and that their reputation will be strengthened by moving in jurisdictions where existing laws are susceptible of betterment for

A just and equitable single inheritance tax.

The designation of classes of investments for Trust Funds where the Trustee is not given discretionary powers by the creator of the trust.

The supervision of Companies by the Governments under which they hold their charters.

I do not ask for any resolution upon these suggestions. The meeting may not be with me as to all or any of them. They are but my ideas for the betterment of system where it may be needed by us as protectors of the property of our clients and of our Companies and for the further advancement of our good names.

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